

Message Text

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ACTION EUR-12

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TRSE-00 ACDA-12 PA-01 /109 W
-----036119 180406Z /66

O 180118Z MAR 78
FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC IMMEDIATE 6719
INFO AMCONSUL MONTREAL
ALL OTHER CONGENS IN CANADA (POUCH)

C O N F I D E N T I A L SECTION 01 OF 05 OTTAWA 01381

DEPARTMENT FOR EUR/CAN; EB AND L/EB

PASS DOE FOR LES GOLDMAN AND ASST. SECRETARY BERGOLD;
DOE/FERC FOR COMMISSIONER SMITH AND JOHN ADGER

E.O. 11652: GDS
TAGS: ENRG, PGOV, SENV, CA
SUBJECT: AMENDMENTS TO NORTHERN GAS PIPELINE BILL (C-25)

REF: (A) OTTAWA 1350; (B) OTTAWA 1313

1. SPECIAL NORTHERN GAS PIPELINE COMMITTEE REPORTED BILL C-25 TO FULL HOUSE FOR THIRD READING WITH AGREED COMMITTEE AMENDMENTS AT NOON TODAY (MARCH 17). FULL TEXT OF AMENDMENTS WITH CLAUSE NUMBER CAPTIONS IS REPEATED BELOW. WHILE ALL AMENDMENTS SHOULD BE SCRUTINIZED BY USG LEGAL OFFICERS, EMBASSY WISHES TO DRAW SPECIAL ATTENTION TO AMENDMENTS TO CLAUSES 3, 16, AND 23.

2. AMENDMENT TO CLAUSE 3, "OBJECTS",POSES POTENTIAL PROBLEM IN THAT IT REQUIRES PIPELINE AGENCY TO ENSURE THAT ANY
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NATIVE CLAIM TO LAND ON PIPELINE RIGHT OF WAY IS "DEALT WITH IN JUST AND EQUITABLE MANNER." WHILE THIS OBJECTIVE IS NOT OPERATIONALIZED BY SPECIFIC GOVERNMENTAL POWERS OR LEGAL REQUIREMENTS ON AGENCY, IT OFFERS POSSIBLE JUSTIFICATION FOR LEGAL CHALLENGE BY DISAFFECTED NATIVE GROUPS.

3. AMENDMENT TO CLAUSE 16 SEEMS TO ELIMINATE POSSIBILITY

OF CABINET MODIFYING REGULATIONS PROMULGATED UNDER PIPE-
LINE ACT WITHOUT REFERENCE TO PARLIAMENT.

4. AS REPORTED REFTEL (B) AMENDMENTS TO CLAUSE 23 TAKE
OUT ORIGINAL LANGUAGE REGARDING APPEALS PROCESS AND SUB-
STITUTE ARTICLE 28 OF FEDERAL COURTS ACT. BESIDES
AUTHORIZING ONE ADDITIONAL LEVEL OF APPEAL, THE
SUPREME COURT, THIS AMENDMENT ADDS TO BASES FOR APPEAL:
(1) FAILURE BY PIPELINE AGENCY TO OBSERVE A PRINCIPLE
OF NATURAL JUSTICE OR REFUSAL TO EXERCISE ITS JURISDICTION
AND (2) ERRONEOUS FINDING OF FACT BY AGENCY MADE IN CAPRI-
CIOUS MANNER OR WITHOUT REGARD TO MATERIAL BEFORE IT.
PREVIOUS LANGUAGE RESTRICTED APPEALS TO ERROR IN LAW.
AMENDMENT THUS INCREASES AGENCY'S POTENTIAL EXPOSURE TO
LEGAL CHALLENGES, ESPECIALLY BY NATIVE GROUPS.

5. IN ADDITION TO COMMITTEE AMENDMENTS, PROGRESSIVE CON-
SERVATIVE (PC) MEMBERS NIELSEN AND BAWDEN WILL PROPOSE
AMENDMENTS ON FLOOR OF HOUSE. NIELSEN'S AMENDMENTS(SEE
TEXT BELOW) DEAL WITH NATIVE CLAIMS AND CABINET REVIEW OF
OWNERSHIP OF PIPELINE COMPANIES. LANGUAGE TO BE DELETED
BY NIELSEN RE NATIVE CLAIMS WILL BE SUBSTITUTED FOR
LANGUAGE PROPOSED BY DEPUTY PRIME MINISTER MACEACHEN AND
REPORTED REFTEL (B). NIELSEN'S AMENDMENTS HAVE BEEN
INFORMALLY APPROVED BY GOVERNMENT. BAWDEN'S AMENDMENT
PROPOSES CAP ON REGULATORY COSTS EQUIVALENT TO 1.5 PER-
CENT

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CENT OF CAPITAL COSTS. IT WILL NOT PASS.

6. DEBATE ON THESE AMENDMENTS BEGINS TUESDAY, MARCH 21,
AND FINAL VOTE COULD COME SOON THEREAFTER, PERHAPS SAME
DAY. WHILE WE SEE LITTLE CHANCE OF BEING ABLE TO INFLU-
ENCE LEGISLATIVE PROCESS AT THIS LATE STAGE, IF THERE ARE
ANY SIGNALS TO CONVEY TO GOC, WE WILL NEED TO ACT PROMPTLY.

7. COMMITTEE AMENDMENTS: BEGIN TEXT.

CLAUSE 2

-----STRIKE OUT LINE 15, ON PAGE 1, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"SCHEDULE I AND INCLUDES ANY EXCHANGE OF NOTES BETWEEN
CANADA AND THE UNITED STATES AMENDING ANNEX III OF THE
AGREEMENT TO GIVE EFFECT TO A REPORT OF THE BOARD, DATED
FEBRUARY 17, 1978, IN WHICH THE BOARD INDICATED IT WOULD
INCLUDE IN ITS DECISION APPROVING, PURSUANT TO THIS ACT,
PIPELINE SPECIFICATIONS, A REQUIREMENT FOR FIFTY-SIX INCH
DIAMETER PIPE WITH A MAXIMUM ALLOWABLE OPERATING PRESSURE

OF 1,080 PSI FOR THAT PORTION OF THE PIPELINE BETWEEN
WHITEHORSE, YUKON TERRITORY AND CAROLINE, ALBERTA;"
CLAUSE 3

-----STRIKE OUT LINE 42, ON PAGE 2, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"PIPELINE TAKING INTO ACCOUNT LOCAL AND REGIONAL INTER-
ESTS, THE INTERESTS OF THE RESIDENTS, PARTICULARLY THE
NATIVE PEOPLE, AND RECOGNIZING THE RESPONSIBILITIES OF THE
GOVERNMENT OF CANADA AND OTHER GOVERNMENTS, AS APPROPRIATE,
TO ENSURE THAT ANY NATIVE CLAIM RELATED TO THE LAND ON
WHICH THE PIPELINE IS TO BE SITUATED IS DEALT WITH IN A
JUST AND EQUITABLE MANNER;"
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. CLAUSE 7

-----STRIKE OUT LINE 32, ON PAGE 4, AND SUBSTITUTE THE

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C O N F I D E N T I A L SECTION 02 OF 05 OTTAWA 01381

FOLLOWING THEREFOR:

--"7. (1) WHERE A MEMBER OF THE BOARD IS DESIG--"

-----STRIKE OUT LINE 38, ON PAGE 4, AND SUBSTITUTE THE FOLLOWING THEREFOR:

--"PLACE OF THAT MEMBER OF THE BOARD.

---(2) NOTWITHSTANDING THE NATIONAL ENERGY BOARD ACT, WHERE A MEMBER OF THE BOARD IS DESIGNATED TO BE THE ADMINISTRATOR OR A DEPUTY TO THE ADMINISTRATOR AND THAT MEMBER IS ONE OF THE ASSOCIATE VICE-CHAIRMEN OF THE BOARD, THE GOVERNOR IN COUNCIL SHALL DESIGNATE ONE OF THE OTHER MEMBERS OF THE BOARD TO BE AN ACTING ASSOCIATE VICE-CHAIRMAN OF THE BOARD DURING THE PERIOD FOR WHICH THE MEMBER OF THE BOARD IS ADMINISTRATOR OR A DEPUTY TO THE ADMINISTRATOR AND THE MEMBER DESIGNATED AS AN ACTING ASSOCIATE VICE-CHAIRMAN HAS AND MAY EXERCISE, DURING THAT PERIOD, ALL THE POWERS AND FUNCTIONS OF AN ASSOCIATE VICE-CHAIRMAN OF THE BOARD."

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CLAUSE 9

-----STRIKE OUT LINE 36, ON PAGE 5, AND SUBSTITUTE THE FOLLOWING THEREFOR:.

--"RITORY AND THE NORTHWEST TERRITORIES, AFTER CONSULTATION WITH THE RESPECTIVE COMMISSIONERS IN COUNCIL OF THOSE TERRITORIES, AS"

CLAUSE 16

-----STRIKE OUT LINES 32 TO 46, ON PAGE 7, AND LINES 1 TO 7, ON PAGE 8, AND SUBSTITUTE THE FOLLOWING THEREFOR:

--"16. NO TRANSFER OF ANY POWER, DUTY OR FUNCTION UNDER SECTION 14 AUTHORIZES THE MINISTER TO LEVY A TAX OR IMPOSE A LICENCE FEE OR OTHER MONETARY CHARGE GREATER THAN THE TAX, LICENCE FEE OR OTHER MONETARY CHARGE SET OUT IN THE ACT OR REGULATIONS REFERRED TO IN THE TRANSFER."

CLAUSE 17

-----STRIKE OUT LINES 12 TO 14, ON PAGE 8, AND SUBSTITUTE THE FOLLOWING THEREFOR:

---(A) THE COMMISSIONER AND A REPRESENTATIVE OF THE YUKON TERRITORY NAMED BY THE GOVERNOR-IN-COUNCIL UPON THE RECOMMENDATION OF THE COMMISSIONER-IN-COUNCIL OF THE YUKON

TERRITORY; AND"

CLAUSE 18

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-----STRIKE OUT THE WORD "MAY" IN LINE 39, ON PAGE 3, AND
SUBSTITUTE THEREFOR THE WORD "SHALL".

-----STRIKE OUT LINE 2, ON PAGE 9, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"DETERMINE.

---(1.1) ONE OF THE ADVISORY COUNCILS ESTABLISHED UNDER
SUBSECTION (1) SHALL BE THE YUKON TERRITORY ADVISORY
COUNCIL WITH MEMBERS REPRESENTATIVE OF AREAS AND INTERESTS,
INCLUDING NATIVE INTERESTS, IN THE YUKON TERRITORY."

CLAUSE 20

-----STRIKE OUT LINE 45, ON PAGE 10, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"AMENDED PRIOR TO FEBRUARY 3, 1978."

CLAUSE 23

-----STRIKE OUT LINES 28 TO 47, ON PAGE 11, LINES 1 TO 42,
ON PAGE 12, AND LINES 1 TO 3, ON PAGE 13, AND SUBSTITUTE
THE FOLLOWING THEREFOR:

--"23. (1) A DECISION OR ORDER OF THE BOARD IN RELATION
TO THE PIPELINE IS VALID AND EFFECTIVE, FINAL AND CONCLU-
SIVE AND NO SUCH DECISION OR ORDER OR ANY PROCEEDING OF
THE BOARD RESULTING IN THE ISSUE OF SUCH A DECISION OR
ORDER IS SUBJECT TO ANY PROCEEDING BY WAY OF APPEAL OR RE-
VIEW IN ANY COURT OR TO BE QUESTIONED, ENJOINED, PROHIBIT-
ED, REMOVED, RESTRAINED, SET ASIDE OR OTHERWISE AFFECTED
BY ANY SUCH PROCEEDING EXCEPT AS SET OUT IN SECTION 28 OF
THE FEDERAL COURT ACT.

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---8(2) NOTWITHSTANDING SUBSECTION 28(2) OF THE FEDERAL
COURT ACT, WHERE A PERSON IS DIRECTLY AFFECTED BY A DE-

CISION OR ORDER OF THE BOARD IN RELATION TO THE PIPELINE.
HE MAY APPLY TO THE FEDERAL COURT OF APPEAL FOR A REVIEW
UNDER SECTION 28 OF THE FEDERAL COURT ACT BY FILING A
NOTICE OF THE APPLICATION IN THE FEDERAL COURT WITHIN
THIRTY DAYS AFTER THE DECISION OR ORDER IS MADE OR WITHIN
SUCH FURTHER TIME AS THE FEDERAL COURT OF APPEAL OR A
JUDGE THEREOF MAY, EITHER BEFORE OR AFTER THE EXPIRY OF
THOSE THIRTY DAYS, FIX OR ALLOW."

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TO SECSTATE WASHDC IMMEDIATE 6721

INFO AMCONSUL MONTREAL

ALL OTHER CONGENS IN CANADA (POUCH)

C O N F I D E N T I A L SECTION 03 OF 05 OTTAWA 01381

CLAUSE 26

-----STRIKE OUT LINES 12 TO 19, ON PAGE 13, AND SUBSTITUTE
THE FOLLOWING THEREFOR:

--"26. (1) WHERE A COMPANY FAILS TO COMPLY WITH,

---(A) A TERM OR CONDITION OF A CERTIFICATE OF PUBLIC CON-
VENIENCE AND NECESSITY DECLARED TO BE ISSUED BY SUBSECTION
20(1), OR

---(B) AN ORDER OR DIRECTION ISSUED BY THE BOARD OR THE
DESIGNATED OFFICER IN RELATION TO SUCH A CERTIFICATE,

-THE DESIGNATED OFFICER MAY

---(C) GIVE THE COMPANY WRITTEN NOTICE OF SUCH FAILURE AND

SET, IN THE NOTICE, A TIME WITHIN WHICH THE COMPANY SHALL
COMPLY WITH THE TERM OR CONDITION OR ORDER OR DIRECTION,
AND

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--(D) CAUSE THE NOTICE TO BE SERVED ON THE COMPANY BY
REGISTERED MAIL OR IN PERSON.

--(1.1) WHERE, PURSUANT TO SUBSECTION (1), THE DESIGNATED
OFFICER GIVES THE COMPANY NOTICE OF FAILURE TO COMPLY
AND THE COMPANY FAILS, WITHIN THE TIME SET OUT IN THE
NOTICE AND WITHOUT LAWFUL EXCUSE, TO COMPLY WITH THE TERM
OR CONDITION OR ORDER OR DIRECTION, SET OUT IN THE NOTICE."

-----STRIKE OUT LINE 25, ON PAGE 13, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"MENT UNDER SUBSECTION (1.1) AGAINST A COM--"

-----STRIKE OUT LINE 31, ON PAGE 13, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"MENT UNDER SUBSECTION (1.1) MAY, WITHIN THIRTY"

CLAUSE 30

-----STRIKE OUT LINE 28, ON PAGE 15, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"MAY, AFTER THIRTY DAYS NOTICE OF HIS INTENTION TO DO
SO, TAKE ALL REASONABLE MEASURES, OR DIRECT"

-----STRIKE OUT LINE 32, ON PAGE 15, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"ORDER OR DIRECTION, UNLESS WITHIN THE THIRTY DAYS THE
COMPANY HAS COMPLIED WITH THE TERM OR CONDITION OR ORDER
OR DIRECTION, AS THE CASE MAY BE, OR HAS MADE ARRANGEMENTS
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THAT ARE SATISFACTORY TO THE MINISTER TO COMPLY WITH THE
TERM OR CONDITION OR ORDER OR DIRECTION."

CLAUSE 34

-----STRIKE OUT LINE 41, ON PAGE 17, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"(B) ESTABLISH A RATE OF RETURN, TAKING INTO ACCOUNT
THE"

CLAUSE 37

-----STRIKE OUT LINE 34, ON PAGE 18, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"MAY, AFTER CONSULTATION WITH THE COMMISSIONER IN COUN-
CIL, BY ORDER, TRANSFER THE ADMINISTRATION,"

CLAUSE 38

-----STRIKE OUT LINES 40 TO 42, ON PAGE 19, AND SUBSTITUTE
THE FOLLOWING THEREFOR:

--"LANDS ACT THAT ARE LANDS FOR WHICH LETTERS PATENT, A
CERTIFICATE OF TITLE OR A NOTIFICATION HAS NOT BEEN IS-
SUED;"

CLAUSE 42

-----STRIKE OUT LINE 6, ON PAGE 25, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

--"A DAY NOT LATER THAN THE FORTY-FIFTH DAY"

-----STRIKE OUT LINE 12, ON PAGE 25, AND SUBSTITUTE THE
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FOLLOWING THEREFORE:

. YUKON TERRITORY WATER BOARD, ISSUE A LICENCE FOR"
CLAUSE 43

-----STRIKE OUT LINES 25 AND 26, ON PAGE 25, AND SUBSTI-
TUTE THE FOLLOWING THEREFOR:

--"43. (1) EVERY PERSON WHO WILFULLY AND WITHOUT LAWFUL
EXCUSE FAILS TO COMPLY WITH"

-----STRIKE OUT LINE 9, ON PAGE 26, AND SUBSTITUTE THE
FOLLOWING THEREFOR:

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ALL OTHER CONGENS IN CANADA (POUCH)

C O N F I D E N T I A L SECTION 04 OF 05 OTTAWA 01381

--"MATTER OF THE PROCEEDINGS AROSE.

--(5) PROCEEDINGS IN RESPECT OF AN OFFENCE UNDER THIS ACT
MAY NOT BE INSTITUTED WITHOUT THE CONSENT OF THE ATTORNEY
GENERAL OF CANADA."

CONDITION 2 OF SCHEDULE III

-----STRIKE OUT LINE 1 OF CONDITION 2, ON PAGE 49, AND
SUBSTITUTE THE FOLLOWING THEREFOR:

--"2. SUBJECT TO CONDITION 18, THE COMPANY SHALL CAUSE
THE PIPELINE TO BE"

CONDITION 3 OF SCHEDULE III

-----ADD IMMEDIATELY AFTER CONDITION 3(C), ON PAGE 49,
THE FOLLOWING:

--(D) A SCHEDULE FOR PROJECT CONTROL, USING A SCHEDULING
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SYSTEM ACCEPTABLE TO THE AGENCY, WHICH SCHEDULE SHALL

----(1) GOVERN THE COMPANY'S ACTIVITIES THAT CAN REASON-

ABLY BE ANTICIPATED IN CONNECTION WITH THE PROJECT;

---(11) INCLUDE SCHEDULES FOR REGULATORY REVIEWS AND APPROVALS; AND

---(11) BE UPDATED AT THIRTY DAY INTERVALS OR AS OTHERWISE REQUESTED BY THE AGENCY."

CONDITION 17 OF SCHEDULE III

-----STRIKE OUT CONDITION 17, ON PAGE 53, AND SUBSTITUTE THE FOLLOWING THEREFOR:

--"17. PRIOR TO COMMENCING THE CONSTRUCTION OF ANY SECTION OR PART OF THE PIPELINE, THE COMPANY SHALL PROVIDE THE MINISTER AND THE BOARD WITH SUCH PROOF AS THE MINISTER AND THE BOARD CONSIDER APPROPRIATE THAT THE COMPANY HAS OBTAINED ALL NECESSARY REGULATORY APPROVALS."

NEW CONDITION 18.1 OF SCHEDULE III

-----ADD IMMEDIATELY AFTER CONDITION 18, ON PAGE 53, THE FOLLOWING NEW CONDITION 18.1:

--"18.1 WHEN THE COMPANY ASCERTAINS THE LANDS OF A LANDOWNER THAT MAY BE REQUIRED FOR THE PURPOSES OF A SECTION OR PART OF THE PIPELINE, THE COMPANY SHALL SERVE A NOTICE, IN A MANNER AND IN A FORM TO BE DETERMINED BY THE DESIGNATED OFFICER, ON THE LANDOWNER WHICH NOTICE SHALL SET OUT THE LOCATION OF THE OFFICES OF THE AGENCY AND THE CONFIDENTIAL

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RIGHT OF THE LANDOWNER WITHIN THIRTY DAYS OF BEING SERVED TO MAKE REPRESENTATIONS TO THE AGENCY RESPECTING THE FINAL ROUTE OF THE PIPELINE FOR ITS CONSIDERATION PRIOR TO ITS APPROVAL OF THE FINAL DETAILED ROUTE."

CONDITION 19 OF SCHEDULE III

-----STRIKE OUT LINE 1 OF CONDITION 19, ON PAGE 54, AND SUBSTITUTE THE FOLLOWING THEREFOR:

OF THE AGREEMENT,"

CONDITION 20 OF SCHEDULE III

-----STRIKE OUT CONDITION 20, ON PAGE 54, AND SUBSTITUTE THE FOLLOWING THEREFOR:

--"20. WHEN THE DEMPSTER LINE REFERRED TO IN THE AGREE-

MENT IS TO BE CONNECTED TO THE PIPELINE OR WHEN ADDI-
TIONAL PIPELINE CAPACITY IS NEEDED TO MEET THE CONTRACTUAL
REQUIREMENTS OF UNITED STATES OR CANADIAN SHIPPERS, THE
COMPANY SHALL EXPAND THE CAPACITY OF THE PIPELINE, SUBJECT
TO THE REGULATORY REQUIREMENTS OF THE BOARD AND TO ANY
AGREEMENT THAT MAY BE ENTERED INTO BETWEEN HER MAJESTY
IN RIGHT OF CANADA AND THE COMPANY, IN AN EFFICIENT MANNER
TO PERMIT THE CONNECTION OF THE DEMPSTER LINE OR TO MEET
THOSE CONTRACTUAL REQUIREMENTS AS THE CASE MAY BE."
END OF TEXT.

8. PC MEMBER NIELSEN'S AMENDMENTS: BEGIN TEXT.

CLAUSE 20

-----STRIKE OUT THE WORD "MINISTER" IN LINES 41 AND 42,
ON PAGE 10, AND SUBSTITUTE THEREFOR THE WORDS "GOVERNOR-
IN-COUNCIL."
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CLAUSE 23

INSERT THE FOLLOWING AS SUBCLAUSE (1):

NOTWITHSTANDING THIS ACT, ANY NATIVE CLAIM, RIGHT, TITLE,

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OR INTEREST, WHICH THE NATIVE PEOPLE OF CANADA MAY HAVE
HAD PRIOR TO THE COMING INTO FORCE OF THIS ACT IN AND TO
THE LAND ON WHICH THE PIPELINE WILL BE SITUATED SHALL
CONTINUE TO EXIST UNTIL A SETTLEMENT IN RESPECT OF ANY
SUCH CLAIM, RIGHT, TITLE OR INTEREST IS EFFECTED.

NOTE: NUMBERING OF THIS PROPOSED AMENDMENT CONFLICTS
WITH AGREED COMMITTEE AMENDMENT TO SAME CLAUSE. THIS
IS, HOWEVER, ONLY TECHNICAL EDITING PROBLEM. NIELSEN'S
AMENDMENT WILL BE INSERTED IN THIS CLAUSE. ENDERS

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Message Attributes

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SAS ID: 3283112
Secure: OPEN
Status: NATIVE
Subject: AMENDMENTS TO NORTHERN GAS PIPELINE BILL (C-25)
TAGS: ENRG, PGOV, SENV, CA
To: STATE
Type: TE
vdkgvwkey: odhc://SAS/SAS.dbo.SAS_Docs/94a07cc4-c288-dd11-92da-001cc4696bcc
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